

**FOR COUNTY USE ONLY**

County of San Bernardino

F A S**STANDARD CONTRACT**

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code		SC	Dept.	A	Contract Number	
County Department Arrowhead Regional Medical Center			Dept.		Orgn.	Contractor's License No.	
County Department Contract Representative Mark H. Uffer, Director			Telephone 580-6150		Total Contract Amount Variable		
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input checked="" type="checkbox"/> Unencumbered <input type="checkbox"/> Other:							
If not encumbered or revenue contract type, provide reason: <u>Amount will vary based on patient volume</u>							
Commodity Code			Contract Start Date 7/1/03		Contract End Date 6/30/04		Original Amount Variable
Fund EAD	Dept. MCR	Organization MCR	Appr. 200	Obj/Rev Source 2445	GRC/PROJ/JOB No.		Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.		Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.		Amount
Project Name				Estimated Payment Total by Fiscal Year			
				FY	Amount	I/D	

THIS CONTRACT is entered into in the State of California by and between the County of San Bernardino, hereinafter called the County, and

Name

Inland Medical Rehabilitation, Inc.Hereinafter called Corporation

Address

400 North Pepper AvenueColton, California 92324-1819

Telephone

(909) 580-6250

Federal ID No. or Social Security

No. 33-0618077**IT IS HEREBY AGREED AS FOLLOWS:**

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

PART I**RECITALS**

- 1.01 County is the owner and operator of an acute care hospital located at 400 North Pepper Avenue, Colton, California, known as Arrowhead Regional Medical Center, hereinafter referred to as "Hospital," in which is located a Section of Rehabilitation Medicine, in the Department of Orthopedics, hereinafter referred to as Section.
- 1.02 Corporation is a medical corporation organized under the Medical Professional Corporation laws of the State of California. The physicians of Corporation shall be duly qualified and licensed physicians in California, qualified for practicing the medical specialties of Physical Medicine and Rehabilitation.
- 1.03 The principal stockholder of the Corporation must meet all the qualifications of Section Director set forth in the Bylaws of the Hospital's Medical Staff and shall serve as the Director of the Section. Said principal stockholder must be designated with the authority to assure that all terms of this Agreement are fulfilled in an appropriate and timely manner, to take corrective actions when necessary and to resolve all issues brought forth between the Corporation and County. The principal stockholder as well as any other physician or other personnel designated to serve in any administrative role as described in Part II, Paragraphs 2.01 and 2.02, and Part III, must be available to devote appropriate time necessary to fulfill all terms of this Agreement and shall not serve in an administrative role at any other hospital or healthcare entity without prior written consent of the Hospital's Director and Medical Director.

- 1.04 The purpose of this Agreement is to provide a full statement of the respective rights and responsibilities of the parties in connection with the operation of the Section during the term hereof.

PART II

DEPARTMENT OF ORTHOPEDICS

SECTION OF REHABILITATION MEDICINE

- 2.01 Corporation shall designate the principal stockholder who is a physician certified in the specialty of Physical Medicine and Rehabilitation or an appropriate subspecialty, and who is otherwise qualified, to serve as Section Director.

Such designation shall be made in accordance with Paragraph 1.03 of this Agreement and the pertinent sections of the Bylaws of the Hospital's Medical Staff as are in effect from time to time and with the approval of Hospital's Director and Medical Director.

- 2.02 Corporation shall also designate such qualified physicians as are necessary to carry out the terms of this contract. Such designation shall be made in accordance with Paragraph 1.03 of this Agreement and the pertinent sections of the Bylaws of the Hospital's Medical Staff as are in effect from time to time and with the approval of Hospital's Director and Medical Director.

PART III

DUTIES OF CORPORATION

In order to provide the services required herein, Corporation shall provide the services of qualified physicians and other professional and non-professional individuals to serve under the following terms and conditions:

- 3.01 **Responsibilities - Provision of Professional Personnel and Non-Professional Personnel**

Corporation shall provide the services of the principal stockholder to serve as the Section Director. Said Director shall perform all duties and functions of other Section Directors as described in the pertinent sections of the Bylaws of the Hospital's Medical Staff as are in effect from time to time in accordance with Paragraphs 1.03 and 2.01.

- 3.02 **Responsibilities of the Corporation - Administrative and Teaching**

Corporation shall provide on an ongoing basis such administrative and educational management necessary to:

- a. Establish the Section to provide clinical and related services to all patients requiring Physical Medicine and Rehabilitation services.
 1. Assume the Medical Administrative responsibility of the Section.
 2. Create and coordinate throughout the Hospital's health care system a comprehensive community and institution-based array of services for the patients requiring acute and chronic rehabilitation, including evaluating the need to establish an inpatient rehabilitation unit.
 3. Facilitate efforts to improve the quality of life for disabled and chronically ill persons and their caretakers by providing access to a full continuum of care.
 4. Assist in the development of inpatient and outpatient rehabilitation services for elderly patients requiring such services.
 5. Establish a model for interdisciplinary teamwork which can be emulated and recreated throughout the health care system.
 6. Provide teaching in Physical Medicine and Rehabilitation for Hospital's Family Medicine Residents, which will satisfy the special requirements of the Residency Review Committee.

7. Provide teaching in Physical Medicine and Rehabilitation for medical students in keeping with student requests for electives and selectives in Physical Medicine and Rehabilitation to include preparation of written evaluation of student performance within thirty (30) days of a student's completion in the Section.
 8. Assist the newly formed managed care organization in the identification, assessment and case management of disabled patients enrolled in the managed care program who are experiencing functional difficulties, to insure high quality care and effective use of the available health care services.
- b. Work with other County departments and agencies to ensure efficient and cost effective operations of all Physical Medicine and Rehabilitation programs.
 - c. Participate in all managed care programs sponsored by or approved by County and all group practice activities of the Hospital's Medical Staff.
 - d. Participate in the clinical, educational, and administrative activities Arrowhead Regional Medical Center/Western University's Academic Health Center.
 - e. Carry out all additional duties and functions of the Section Director as delineated in the Bylaws of the Hospital's Medical Staff as are in effect from time to time.
 - f. Perform other administrative and educational duties as assigned from time to time by the Director or Medical Director of Hospital.

3.03 Responsibilities of Corporation - Supervision

Corporation shall provide the services of a qualified physician to:

- a. Carry out comprehensive assessments of persons requiring rehabilitation.
- b. Supervise the daily care rendered to all County patients referred to other institutions for Physical Medicine or Rehabilitation Services.
- c. Provide appropriate outpatient and inpatient services to patients suffering from illnesses such as occupational injuries, osteoporosis, multiple sclerosis, bladder and bowel incontinence, and the older aged adult group (geriatric patients) requiring chronic wound care
- d. Supervise and direct the daily activities of all personnel assigned to the Section.

3.04 Clinical Duties

- a. Establish a Spinal Cord Injury Clinic and appropriate clinics to serve as providers of clinical services to managed care and other "covered" and "non-covered" patients.
- b. Corporation shall provide appropriate clinical services to all patients enrolled in County Managed Care programs, County clinics, or referred by County authorized physician groups or clinics, as well as all group practice activities of the Hospital's Medical Staff.

3.05 Projection of Needs

It shall be the responsibility of the Corporation to annually project space, personnel, and equipment needs for the areas of responsibility as defined by this Agreement for each County fiscal year and project needs for future years as required by Hospital and to submit such evaluations and projections in writing to the Hospital.

3.06 Physician Coverage

- a. Corporation shall ensure that there is a qualified physician available at all times to ensure efficient performance of all contractual, clinical, administrative and educational services.

- b. The position of Section Director, and other administrative personnel designated pursuant to Parts II and III of this Agreement, will be filled by a physician in accordance with Paragraph 1.03 of this Agreement who shall devote sufficient time to perform all Administrative duties in a timely and efficient manner. In the event that Corporation fails to provide coverage of the positions described in Parts II and III and other pertinent sections of this Agreement, the parties agree that the compensation due to Corporation pursuant to Part V of this Agreement for such administration, supervision, and teaching for these positions shall be reduced in proportion to the actual reduction in coverage of the positions.

3.07 Medical Staff Committees

Corporation shall ensure that physicians designated in accordance with Parts I, II, and III of this Agreement shall faithfully serve on the Hospital's Medical Staff Committees when appointed thereto by the President of the Medical Staff.

3.08 Independent Physician Office Ventures

Corporation is required to obtain approval from Hospital Director and Medical Director prior to developing off-site physician offices that are not affiliated with the Hospital. To the extent prohibited by law and this agreement, Corporation shall not compete with Hospital by re-directing County patients to private practice ventures.

3.09 Clerical and Non-Professional Personnel

Personnel employed by the Corporation are expected to develop and maintain an amicable working relationship with Hospital management and staff. Such personnel will maintain a reporting relationship with the Executive Secretary in the Hospital's Department of Administration and will follow all Hospital policies and directives referred to in Paragraph 8.02. Employees of the Corporation who fail to maintain an amicable relationship and fail to follow Hospital policies and directives may be subject to removal from the Hospital to the extent permitted by law.

PART IV

DUTIES OF HOSPITAL

4.01 Other Physicians and Professional Personnel

Hospital expressly agrees that duties of the Corporation may be performed by such physicians and other professional personnel as Corporation may employ or associates or partners in practice with Corporation or other persons specializing in Physical Medicine and Rehabilitation whose services are contracted for by the Corporation. However, all employed physicians or contracting physicians must qualify for and be appointed to membership on the Medical Staff of the Hospital.

4.02 Space

Hospital shall furnish for the use of the Corporation only such office space as Hospital may deem necessary for the proper administrative and educational operation of the Section.

PART V

BILLING AND COMPENSATION

5.01 Compensation for Administration, Supervision, and Teaching

For administrative, supervisory and teaching services rendered pursuant to Part III of this Agreement, County shall pay Corporation as follows:

Professional Administration & Teaching Faculty

Director, Section of Rehabilitation Medicine	\$ 47,500
Total Administration & Teaching	\$ 47,500

Corporation shall submit to County by the thirtieth day of each month a billing listing the names of all personnel and the time actually devoted to each position occupied during the period covered by the billing and the amount due.

5.02 Method of Payment

For administrative, supervisory, and teaching services provided pursuant to Part III of this Agreement, County shall pay Corporation on the fifteenth day of each month, following submission of billing under Paragraph 5.01 above.

5.03 Time Records

It shall be the responsibility of the Corporation to ensure that physicians sign and record their time spent in administration, supervision, and teaching (where applicable) pursuant to Part III of this Agreement. Corporation shall submit to County such time records at the end of each month using the "Time Record Forms" hereto attached as Exhibit A.

PART VI

DELINQUENT RECORDS AND REPORTS

- 6.01 a. Corporation agrees to provide completed operating notes, where applicable, for all patients cared for within 24 hours after the operation has been performed. Corporation also agrees to prepare and submit Resident Evaluations in accordance with Paragraph 3.02 (a)(7).
- b. Corporation will provide completed medical records and operating notes for all patients cared for not later than 14 business days after receipt of written notification from the Hospital's Director. Corporation shall also provide completed Resident Evaluations not later than 14 business days after receipt of written notification from the Hospital's Medical Director. In the event the appropriate medical records, operating notes, or Resident Evaluations have not been completed and submitted within the time period specified, County shall be entitled to withhold fees due to the Corporation pursuant to Paragraph 5.01 above. Such withholding shall be made from the next payment due to the Corporation following such delinquency.
- c. If a delinquency pursuant to Paragraph 6.01 (b) is corrected within 60 days from the date of withholding, then County agrees to remit and pay over to Corporation all sums previously withheld with respect to the corrected delinquency.
- d. In the event that any delinquency under Paragraph 6.01 (b) is not corrected within 60 days following withholding for such delinquency, then County shall be entitled to treat the amount withheld on account of such delinquency as a deduction which is not subject to the repayment provisions of Paragraph 6.01 (c) above, even after the delinquency has been corrected.

PART VII

DIRECT PATIENT CARE

7.01 Compensation for Direct Patient Care

Hospital shall not compensate Corporation for professional services rendered except as otherwise stated herein.

Corporation shall bill usual and customary charges for such services directly to the patient or appropriate third party payors in accordance with the laws and regulations of the State of California, the United States and appropriate governmental agencies and Corporation shall bear all risks for collection of said fees. Hospital shall use its best efforts to provide Corporation or its billing agents with all records and data necessary to accomplish such billing for patient care services rendered in an efficient and timely manner, to enable all billings to be made within the time limits established by law. Corporation shall not bill patients for services and responsibilities rendered by Corporation pursuant to the applicable provisions of Part III of this Agreement, or for direct patient care rendered by fellows and residents not directly supervised by or in conjunction with faculty personnel of the Corporation.

7.02 Compensation for Services to Sheriff's Department and Juvenile Hall Patients

For care rendered by Corporation to patients referred to Hospital by the Sheriff's Department and Juvenile Hall, Hospital shall compensate Corporation at the full allowable Medi-Cal rate not to exceed \$15,000 per annum.

7.03 Compensation for Services to Patton Patients

Corporation shall bill Hospital the usual and customary fee for professional services rendered by Corporation to patients referred to Hospital by Patton State Hospital. The bill shall be submitted no later than the fifth day of each month and shall identify the Patton patients treated during the previous month, as well as the corresponding professional fee. Hospital shall reimburse Corporation for such services at 95% of the rate for professional fees, which is negotiated and agreed upon between Hospital and Patton State Hospital. Compensation provided pursuant to this paragraph shall be due Corporation only after Hospital has received payment from Patton State Hospital.

7.04 Corporation Compensation to County for Variable Costs Associated with Overhead in Outpatient Clinics

For the use of County space, personnel, and other related costs hereunder, Corporation will reimburse the County the sum total of \$250 per month, which is the fair market value. Corporation may have County deduct said amount from fees owed by County, or may pay County the monthly fee directly on or before the thirtieth day of each month.

7.05 Compensation for Services to Eligible CMSP Patients

For direct physician services rendered to inpatients and outpatients eligible for benefits under the County Medical Services Plan (CMSP), Corporation shall bill as directed by Hospital within 45 days from the date of service. Reimbursement to the Corporation shall be at the Medi-Cal rate for that specific service in effect as of the date the service was rendered.

PART VIII

GENERAL PROVISIONS

8.01 Personnel

All residents, all non-physician personnel, and all non-medical personnel required for the proper operation of the Section, who are not employed by or who have not contracted with Corporation, shall be employed by Hospital or other affiliated institutions.

8.02 Independent Contractors

In the performance of work, duties, and obligations devolving upon Corporation under this Agreement, it is mutually understood and agreed that the Corporation, its employees, associates, partners, and/or contracting persons are at all times acting and performing as independent contractors, practicing the profession of medicine.

Hospital shall neither have nor exercise any control or direction of the methods by which Corporation or its employees, associates, partners, or contracting persons shall perform their work and functions. The sole interest and responsibility of Hospital is to assure that the Section's services covered by this Agreement shall be administered, performed, and rendered in a competent and efficient manner satisfactory to the Hospital's Director and Medical Director and based in accordance with the essentials of acceptable medical practice. All applicable provisions of law and other rules and regulations of any and all governmental authorities relating to licensure and regulation of physicians and hospitals and to the operations of the Section shall be fully complied with by all parties hereto. In addition, the parties shall also operate and conduct the Section in accordance with standards and recommendations of the Joint Commission on Accreditation of Healthcare Organizations, the Bylaws of the Hospital, and the Bylaws, Rules and Regulations of the Medical Staff as may be in effect from time to time.

8.03 Taxes and Workers' Compensation

Corporation shall assume sole and exclusive responsibility for payment of its federal and state income taxes, its federal social security taxes, and for maintaining workers' compensation insurance. Corporation agrees that County shall not be responsible for providing the above taxes and insurance on behalf of Corporation and the latter agrees to defend, indemnify, and hold harmless County from any and all actions and/or claims which seek to collect said taxes and insurance from County.

8.04 Professional Liability Indemnity

County shall indemnify Corporation as is provided by the Professional Liability Indemnity Clause, which is attached hereto as Exhibit "B" and is incorporated herein by this reference.

8.05 Disagreements

Any questions or disagreements concerning standards of professional practice or the character of services furnished in the Section shall be processed according to the Bylaws of the Medical Staff as are in effect from time to time.

8.06 Assignment

Nothing contained in this Agreement shall be construed to permit assignment by Corporation of any rights and duties under this Agreement and such assignment is expressly prohibited without the written consent of Hospital.

8.07 Term of Agreement

This Agreement shall be effective July 1, 2003, and shall remain in effect through June 30, 2004, unless otherwise terminated for cause or amended by mutual agreement.

8.08 Inspection of Records

Corporation further agrees that only to the extent required by Section 952 of Public Law 96-499, and the regulations promulgated thereunder, those portions of the books and records of the Corporation which relate to the Corporation's activities pursuant to this Agreement will be available to the Secretary of H.H.S. or the Comptroller-General for a period of four (4) years after the relevant services are furnished.

8.09 Notices

All notices or consents to be given by any party or parties to this Agreement to any other party or parties hereto shall be given in writing, by personal service, by registered or certified mail, postage prepaid, by wire, mailgram or telegram, or by courier service or messenger. Notice given by personal service or otherwise shall be duly delivered or addressed as follows, or shall be directed to such other person or address as either party may hereafter specify in writing:

To County: Director
 Arrowhead Regional Medical Center
 400 North Pepper Avenue
 Colton, California 92324-1819

To Corporation: Robert H. Kounang, M.D., President
 Inland Medical Rehabilitation, Inc.
 Arrowhead Regional Medical Center
 400 North Pepper Avenue
 Colton, California 92324-1819

Any such notice to any party deposited in the mails for delivery in the United States Postal Service shall be deemed for all purposes of this Agreement to have been given 48 hours after such deposit. Notice delivered by any other means except personal service, shall be deemed given 24 hours after dispatch or transmission. Notice delivered by personal service shall be deemed given upon delivery.

8.10 Disability or Death of Corporate Stockholder

The parties agree that there should be a plan to provide for the continuity of services to Hospital in the event of the death or disability of the physician(s) whose license is attached to the Corporation. Accordingly, the parties agree that at any time it is decided that the primary responsible physician or Section Director, as the case may be, is permanently disabled or otherwise unable to perform his or her duties under the contract, Corporation shall have six (6) months from the disability date to license the Corporation to another physician acceptable to County. Further, County shall have the right from the date of disability to select or otherwise approve an acting chair to serve in such capacity until the expiration of the contract or his or her replacement is approved by the County and by Corporation. The parties expressly agree that at all times County shall receive the services and be provided with personnel all as set forth and required in the existing agreement.

8.11 Discrimination

The Corporation shall not discriminate on the grounds of race, age, color, sex, religion, ancestry, national origin, sexual preference, marital status, or handicap in the implementation of this Agreement.

8.12 Incorporation by Reference

This Agreement incorporates by reference any and all other agreements between the Corporation and County, to the extent applicable and permitted by law, for services to County on behalf of Hospital but not other County departments or agencies.

PART IX

CONFLICT OF INTEREST

9.01 Statement of Economic Interests

Corporation shall cause its physician employees, physicians otherwise affiliated or attached to it and physicians who subcontract with it or who subcontract with its subcontractors, to complete an annual Statement of Economic Interests as required by the County of San Bernardino.

PART X

FORMER COUNTY OFFICIALS

10.01 Corporation agrees to provide or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Corporation. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Corporation. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Administrative Officer, or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit, or Safety Management Unit. If during the course of administration of this Agreement, the County determines that the Corporation has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the County is entitled to pursue any available legal remedies.

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* * * * *

COUNTY OF SAN BERNARDINO

(Print or type name of corporation, company, contractor, etc.)

► _____
Dennis Hansberger, Chairman, Board of Supervisors

By: ► _____
(Authorized signature - sign in blue ink)

Dated: _____

Name: _____
(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Title: _____
(Print or Type)

Clerk of the Board of Supervisors
of the County of San Bernardino.

Dated: _____

By _____
Deputy

Address: _____

Approved as to Legal Form

Reviewed by Contract Compliance

Presented to BOS for Signature

► _____
County Counsel

► _____

► _____
Department Head

Date _____

Date _____

Date _____

Auditor/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

TIME RECORD FORM

ADMINISTRATION AND SUPERVISION

Department: _____

Month: _____

Name of Physician and Signature	Week:	Week:	Week:	Week:	Week:	Total

Submitted by: _____

Date: _____

TIME RECORD FORM

ARMC TEACHING

Department: _____

Month: _____

Name of Physician and Signature	Week:	Week:	Week:	Week:	Week:	Total

Submitted by: _____

Date: _____

PROFESSIONAL LIABILITY INDEMNITY

1. As an additional element of compensation to the Corporation under this Agreement, the County shall indemnify the Corporation as is provided below.
2. For purposes of this Part (Professional Liability Indemnity), the term "Corporation" shall include:
 - a. The Corporation itself;
 - b. The Corporation's physician board members and physician employees;
 - c. Paraprofessionals, paramedical personnel, physician extenders and all other persons employed by the Corporation who are providing services required of the Corporation by this Agreement;
 - d. Medical professional corporations, partnerships or other legal entities which, or individuals who, subcontract with the Corporation to perform services required of the Corporation by this Agreement ("first tier subcontractor(s)"), including all physicians and other employees of such first tier subcontractor(s) who render services required of the Corporation by this Agreement; and
 - e. Medical professional corporations, partnerships or other legal entities which, or individuals who, subcontract with first tier subcontractors to perform services required of the Corporation by this Agreement ("second tier subcontractors"), including all physicians and other employees of such second tier subcontractors who render services required of the Corporation under this Agreement. The County's obligation to indemnify the first tier or second tier subcontractors or their employees as provided in subparagraphs (d) and (e) of this paragraph 2 herein above is contingent upon the following: (1) a written agreement or provision of a written agreement executed by the Corporation and such first tier or second tier subcontractor(s), which agreement or provision requires that the first tier or second tier subcontractor(s) adhere to the terms and conditions of this Part (Professional Liability Indemnity); and (2) the approval in writing by the Hospital's Director of said agreement or provision of Agreement.
3. The County shall, subject to the terms, limitations, exclusions, and conditions of this Agreement, indemnify, defend, and hold harmless the Corporation for any and all sums which the Corporation shall by law be held liable to pay for damages arising out of any demand for money or services by any patient, or anyone claiming damages on account of bodily injury or mental injury to or death of any patient caused by or alleged to have been caused by error, omission, or negligence, active or passive, in professional services rendered or that should have been rendered by Corporation exclusively at the Hospital or County-sponsored facilities provided always that:
 - a. Such malpractice results in a claim being made or legal action commenced against the Corporation, and notice of such claim or action has been given in accordance with the provisions contained in paragraph 9 of this Part (Professional Liability Indemnity);
 - b. There shall be no liability hereunder for any claim or action against the Corporation for malpractice committed or alleged to have been committed prior to the operational date or subsequent to the term of this Agreement.

The date that a claim is made shall not determine the coverage under this Part. Any claim of malpractice or alleged malpractice that occurs during the term of this Agreement shall be indemnified against, regardless of the date on which the claim is made or the action is filed.
4. The indemnification promised hereby shall include all theories of liability against the Corporation regardless of whether said liability is founded on negligence or strict liability or any other rule or law attributing liability to the Corporation. Such indemnification as is afforded by this Agreement is extended to include the Corporation only while it is acting within the scope of duty pursuant to the terms of this Agreement and shall not apply to acts or omissions by or at the direction of the Corporation committed with actual malice. In addition, the indemnification promised hereby shall not include any exemplary or punitive damages levied against the Corporation, any act committed in violation of any laws or ordinances resulting in criminal conviction, services rendered while under the influence of intoxicants or narcotics, or any practice or service not required by the terms of this Agreement.

5. In providing for such indemnification, it is not the intent of either party to waive any applicable statutory or other immunity from liability or any of claims requirements of the Government code. Such indemnification shall not exceed two million dollars (\$2,000,000) for any single act or omission indemnifiable hereunder, or the sum of five million dollars (\$5,000,000) aggregate for all acts or omissions indemnifiable hereunder per physician member which occur in any single operating year of this Agreement. For purposes of this Part (Professional Liability Indemnity), said operating year shall begin with the date on which this Agreement is executed by the County's Board of Supervisors and shall conclude on June 30 of this fiscal year; thereafter, each operating year shall run from July 1 to June 30.
6. The County shall provide the indemnification referred to above through a program of self-insurance. The Corporation shall follow the guidelines and procedures contained in any risk management plan which may be established by the County, upon being informed in writing by the County of such guidelines and procedures.
7. As respects the indemnity afforded by this Agreement, the County shall, in the name of and on behalf of the Corporation, diligently investigate and defend any and all claims or suits made or brought against Corporation, shall retain as legal counsel attorney(s) skilled in investigation, defense, and settlement of medical malpractice claims, and shall pay all costs and expenses incurred in any such investigation and defense, including, but not limited to attorneys' fees, expert witness fees, and court costs. In addition to and not inconsistent with any other provision of this Part (Professional Liability Indemnity) the Corporation may, at its option and sole expense, participate in the investigation, settlement or defense of any claim or suit against the Corporation. The County will not settle any claims without the written consent of the Corporation. If however, the Corporation in any such claim or suit refuses to consent to any settlement recommended in writing by the County and elects to contest or continue any legal proceedings, then the liability of the County shall not exceed the amount for which the claim or suit could have been so settled plus the cost and expense incurred with its consent up to the date of such refusal. Any judgment rendered against the Corporation in excess of the settlement figure recommended in writing by the County shall be the sole responsibility of the Corporation with respect to said excess amount, including all costs plus all attorneys' fees, relating to such excess amount.
8. If a payment in excess of the amount of indemnity available under this Professional Liability Indemnify clause must be made to dispose of a claim, then the liability of the County for costs and expenses incurred with its consent shall be in such proportion hereof as the amount of indemnity available under this clause bears to the amount paid to dispose of the claim.
9. The following are conditions precedent to the right of the Corporation to be defended and/or indemnified under this Part (Professional Liability Indemnity) provided that the County may not disclaim such defense and/or indemnification if it has not been materially prejudiced by the nonperformance of such condition(s):
 - a. During the currency of this Agreement, the Corporation shall, within ten (10) business days, after receiving knowledge of any event described in this subparagraph (a.) of this Section 9, give to the person or persons designated by the County notice in writing of:
 - (1) Any conduct or circumstances which the Corporation should reasonably believe may give rise to a claim for malpractice being made against the Corporation, or
 - (2) Any claim for malpractice made against the Corporation, or
 - (3) The receipt of notice from any person of any intention to hold the Corporation responsible for any malpractice.
 - b. The Corporation shall at all times without charge to the County:
 - (1) Give to the County or its duly appointed representatives such information, assistance, and signed statements as the County may require; and
 - (2) Assist, without cost to the Corporation, in the County's defense of any claim, including without limitation, cooperating with the County, and upon the County's request, attending hearings and trials, assisting in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits.

c. The Corporation shall not, without the written consent of County's duly appointed representative, admit liability for or settle any claim, or

(1) Incur on behalf of the County any cost or expense in connection with such claim, or

(2) Give any material or oral or written statements to anyone in connection with admitting or settling such claim.

10. If the County becomes liable for any payment under this Part (Professional Liability Indemnity), the County shall be subrogated to the extent of such payment, to all the rights and remedies of the Corporation against any party in respect of such loss and shall be entitled at its own expense to sue in the name of the Corporation. The Corporation shall give to the County all such assistance as the County may require to secure its rights and remedies and, at the County's request, shall execute all documents necessary to enable the County effectively to bring suit in the name of the Corporation.